

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3 In re: ) Case No. 23-23817-B-7  
4 MACIE WILCOX, ) DC No. PLC-1  
5 )  
6 Debtor(s). )  
\_\_\_\_\_ )

7  
8 MEMORANDUM DECISION DENYING MOTION FOR CONTEMPT AND SANCTIONS  
9 FOR VIOLATION OF THE AUTOMATIC STAY

10 I.

11 Introduction

12 Before the court is a *Motion for Contempt and Sanctions for*  
13 *Violation of the Automatic Stay by Jaimee A. Jones* filed by  
14 debtor Macie Marie Wilcox. The motion was filed on December 14,  
15 2023, with a hearing date of January 30, 2024.<sup>1</sup> Docket 17.  
16 Jaimee A. Jones filed an opposition on January 16, 2024. Docket  
17 26. No reply was filed as of the date of this memorandum  
18 decision, the time to do so has passed, and the evidentiary  
19 record is now closed. See Local Bankr. R. 9014-1(f)(1)(C).

20 The court has reviewed the motion, opposition, and all  
21 related declarations and exhibits. The court has also reviewed  
22 and takes judicial notice of the docket. See Fed. R. Evid.  
23 201(c). Oral argument is not necessary and it will not assist in  
24 the decision-making process. See Local Bankr. R. 1001-1(f),  
25 91040-1(h). The hearing on January 30, 2024, at 9:30 a.m. will  
26

27 \_\_\_\_\_  
28 <sup>1</sup>The amended notice of hearing incorrectly states that the  
motion was filed, set, and served under Local Bankr. R. 9014-  
1(f)(2). See Docket 23. Since more than 28 days' notice was  
given, Local Bankr. R. 9014-1(f)(1) governs.

1 be vacated. The motion will be decided on the papers. See Fed.  
2 R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017 and  
3 Local Bankr. R. 9014-1(f)(1)(C).

4 The motion has absolutely no merit and it borders on being  
5 sanctionable. It fails to identify which provision of § 362(a)  
6 Ms. Jones violated when she sent the debtor a text message  
7 shortly after learning the debtor filed bankruptcy, supposedly to  
8 harass the debtor, which stated "You're such a piece of shit."<sup>2</sup>  
9 It is also not supported by any admissible evidence from which  
10 the court could conclude - or even infer - that Ms. Jones  
11 violated the automatic stay by sending the debtor the text  
12 message.

## 14 II.

### 15 Background

16 Aside from a screenshot of the text message itself and an  
17 unauthenticated email, the motion is supported only by the  
18 debtor's declaration which consists of three single-sentence  
19 paragraphs totaling seven lines of text that have nothing to do  
20 with the purpose or context of the text message. The declaration  
21 is also signed by the debtor but it identifies the declarant as  
22 "Jaimee A. Jones"- the individual accused of violating the  
23 automatic stay. The full text of the declaration is as follows:

24 I, Jaimee A. Jones, declare:  
25 \_\_\_\_\_

26 <sup>2</sup>The court expresses no opinion as to whether the text  
27 message accurately describes the debtor as an individual or  
28 whether it is an accurate reflection of the debtor's personal  
"moral character."

1 1. I am the Debtor in the above-entitled case. If  
2 called upon to testify, I would testify as  
follows:

3 2. I filed my case on October 27, 2023 and Nikki  
4 Farris has been duly appointed to serve as  
Trustee.

5 3. Exhibit B is a true and correct copy of a  
6 screenshot of the text message I received from  
Jaimee A. Jones on December 6, 2023.

7 Dated: December 11, 2023

/s/ Macie Wilcox  
Macie Wilcox

8  
9 Docket 19.

10 The full extent of the debtor's statement of grounds on  
11 which the motion is based are, restated, as follows:

12 1. The debtor filed a voluntary chapter 7 petition on  
13 October 27, 2023.

14 2. The debtor owed a debt to Ms. Jones.

15 3. Ms. Jones is the plaintiff in a civil case against  
16 the debtor in the Solano County Superior Court, Case  
No. CU23-01892.

17 4. Ms. Jones' state court attorney (who is an employee  
18 of Ms. Jones' law firm) was informed of the debtor's  
bankruptcy filing and case number by a voicemail from  
19 debtor's attorney left at Ms. Jones' office on December  
6, 2023, at approximately 10:50 a.m.

20 5. On December 6, 2023, at 11:01 a.m., Ms. Jones'  
21 attorney received a copy of the bankruptcy petition by  
e-mail sent by an employee at the office of the  
debtor's attorney.

22 6. On December 6, 2023, at 11:04 a.m., Ms. Jones sent  
23 the debtor a text message stating, "You're such a piece  
of shit."

24 7. On December 8, 2023, Ms. Jones was added to  
25 Schedule F as an unsecured creditor.

26 Docket 17.

27 Ms. Jones does not dispute these facts. She does, however,  
28 offer additional context through un rebutted testimony in her

1 declaration. Docket 27.

2 According to Ms. Jones, she did not send the text message to  
3 the debtor as an attempt to collect a debt, to coerce payment of  
4 a debt, or with the expectation that it would result in the  
5 payment of any debt. Rather, she sent the text message out of  
6 disappointment and as an expression of her assessment of the  
7 debtor's personal "moral character."

8 For her part, the debtor is no stranger to the descriptive  
9 words used in the text message. Ms. Jones has observed the  
10 debtor uses similar vulgarities with regularity in both personal  
11 and professional settings.

12  
13 **III.**

14 **Discussion**

15 As an initial matter, the motion fails to identify the  
16 specific provision of § 362(a) that Ms. Jones is accused of  
17 violating. Nevertheless, §§ 362(a)(2), (a)(3), (a)(4), (a)(5),  
18 (a)(7), and (a)(8) are easily excluded. That leaves only §§  
19 362(a)(1) and (a)(6). The court concludes that the text message  
20 violates neither. In other words, the text message is neither  
21 the continuation of a prepetition action or proceeding against  
22 the debtor nor is it an act or attempt to collect a prepetition  
23 debt from or recover on a prepetition claim against the debtor.

24 It has long been the law of this Circuit that harassing and  
25 coercive communications with a debtor violate the automatic stay  
26 when they occur in the context of an attempt to collect a  
27 prepetition debt. Morgan Guar. Tr. Co. of N.Y. v. Am. Sav. &  
28

1 Loan Ass'n, 804 F.2d 1487, 1491 (9th Cir. 1986);<sup>3</sup> see also Zotow  
2 v. Johnson (In re Zotow), 432 B.R. 252, 259 (9th Cir. BAP 2010).  
3 In other words, "[n]ot every communication is prohibited.  
4 Rather, prohibited communications are those which, based on  
5 direct or circumstantial evidence, are geared toward collection  
6 of pre-petition debt, and which are accompanied by coercion or  
7 harassment." In re Singh, 457 B.R. 790, 800 (Bankr. E.D. Cal.  
8 2011) (citing Morgan & Zotow, emphasis added). "Statements  
9 simply providing information to a debtor are permissible  
10 communications that do not run afoul of the stay." Zotow, 432  
11 B.R. at 258. Indeed, to hold otherwise would stray into the  
12 realm of *per se* violations of the automatic stay rejected in  
13 Keller, *supra*. See also Zotow, 432 B.R. at 258 ("Whether a  
14 communication is a permissible or prohibited one is a fact-driven  
15 inquiry which makes any bright line test unworkable.").

16 The text message that Ms. Jones sent the debtor is not  
17 harassing or coercive but, even if it could be considered as  
18 such, based on Ms. Jones' declaration, which is the only  
19 admissible evidence of the context in which the text message was  
20 sent, it is not an act or attempt to collect a prepetition debt.  
21 In fact, according to Ms. Jones, there was zero expectation of  
22 \_\_\_\_\_

23 <sup>3</sup>The issue in Morgan was whether presentment of the debtor's  
24 bearer notes to a third party bank postpetition violated the  
25 automatic stay under § 362(a)(6). "Congress amended § 362 in 1985  
26 to provide that presentment of a negotiable instrument is not a  
27 violation of § 362(a), as now codified in § 362(b)(11). However,  
28 we believe the Ninth Circuit's holding that mere requests for  
payment do not constitute a stay violation absent coercion or  
harassment relevant and is still good law." Keller v. New Penn  
Financial, LLC (In re Keller), 568 B.R. 118, 126 n.7 (9th Cir.  
BAP 2017).

1 payment associated with the text message. The text message is  
2 also not an attempt by Ms. Jones to coerce payment of a debt.  
3 That the debtor herself is a frequent user of similar vulgarities  
4 negates any inference that the text message could have offended  
5 the debtor's sensibilities such that it could have shamed or  
6 guilted the debtor into paying any debt. And there is no basis  
7 for finding that the text message is a continuation of a  
8 prepetition judicial or other proceeding or action aimed at  
9 collecting a debt or recovering a claim.

10 Significant here is that the text message does not state or  
11 suggest that any consequence will befall the debtor or otherwise  
12 flow from the communication. For example, the text message does  
13 not order the debtor to do anything, does not ask the debtor for  
14 anything, does not demand anything from the debtor, and it does  
15 not suggest or imply that anything will happen to the debtor, her  
16 property, or property of the estate. In this regard, the court's  
17 statement in In re Barnes, 2020 WL 6928623 (Bankr. C.D. Cal. July  
18 10, 2020), is instructive:

19 While the Debtors argue the broad reach of the  
20 automatic stay, it would be unreasonable for the court  
21 to find that a communication containing no attempt to  
22 collect on a debt or threats to pursue further action  
23 was coercive or harassing to constitute a violation of  
24 the automatic stay based on the legal standard set  
25 forth in the *Morgan Guaranty Trust* case. In the Email,  
Respondents did not make demands on Debtors for payment  
or threaten to pursue further actions against Debtors  
if they did not settle. Thus, the court determines  
that the statements made by Respondents to Debtors  
through their counsel in the Email were not harassing  
or coercive.

26 Id. at \*4 (emphasis in original).

27 Considering all the circumstances based on the record before  
28

1 it, the court concludes that Ms. Jones' text message to the  
2 debtor falls into the realm of permissible communications meant  
3 only to convey information to the debtor. To reiterate, the text  
4 message is not a prohibited act or attempt to collect or coerce  
5 payment of a prepetition debt- through the continuation of a  
6 judicial proceeding or otherwise. On these points, Ms. Jones'  
7 testimony is admissible, persuasive, unrebutted, and it carries  
8 the day.

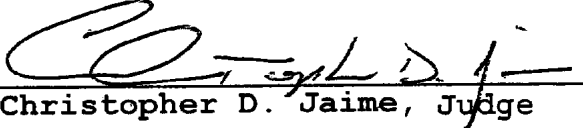
9  
10 **IV.**

11 **Conclusion**

12 Based on the foregoing, the court concludes that Ms. Jones  
13 did not violate the automatic stay of 11 U.S.C. 362(a) by sending  
14 the debtor the referenced text message. Thus, there is  
15 absolutely no basis for sanctions under 11 U.S.C. § 362(k) or  
16 otherwise.

17 An appropriate order will issue.

18  
19 **Dated:** January 25, 2024

20  
21   
22 Christopher D. Jaime, Judge  
23 United States Bankruptcy Court  
24  
25  
26  
27  
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**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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